MOH TING KING

v.

PUBLIC PROSECUTOR

HIGH COURT SABAH & SARAWAK, KUCHING
PUAN ELIZABETH CHAPMAN JC
[CRIMINAL APPLICATION NO. 44-03-95-III]
19 JUNE 1995

CRIMINAL PROCEDURE: *Bail pending trial - Application thereof - Charge of rape - Bail refused by Sessions Court Judge - Whether High Court should interfere with decision of lower Court - Principles to be considered.*

The applicant applied by motion to the High Court to be released on bail pending his trial for a charge of rape under s. 376 of the Penal Code (FMS Cap 445) as his application for bail before the Sessions Court was unsuccessful. The prosecution objected on the grounds that the offence was non-bailable, the accused was facing another charge of rape under s. 376 fixed for hearing on 26 June 1995 and that there was a danger that he might intimidate the complainant.

Held:

[1] The High Court will not lightly interfere with the exercise of discretion vested in the lower Court and where the Sessions Judge refused bail after taking into consideration all the circumstances of the case, the High Court will not interfere with the order unless it can be shown that the exercise of the discretion was erroneous.

[2] From the perusal of the record of the Court below, it is apparent that the refusal to grant bail in this case stems from the accused being charged for another offence of rape during his release on bail. In deciding whether to grant or refuse bail the Court will have to take into consideration, amongst other things, the nature and gravity of the offence charged, the severity and degree of punishment which conviction might entail, the dangers of the offence being continued or repeated, the danger of the witnesses being tampered with or that the prosecution evidence might be tampered with, the opportunity of the accused to prepare the defence and the long period of detention of the accused. It is well settled that bail will not be withheld merely as a punishment and that the requirements as to bail are to secure the attendance of an accused person at the trial.

[3] In this case, the refusal of the Court below to grant bail is justifiable in the circumstances. The likelihood of the accused intimidating the complainant in this case would itself be a cogent ground for refusing bail. Furthermore there is nothing to show that the accused would be hampered

in the preparation of his defence whilst under remand and the Sessions Judge has fixed the earliest possible date for the trial. Therefore the period of detention cannot be said to be unduly long.

[Application dismissed]

Cases referred to:
R v. Rose [1891] 67 LJQB 289; 17 Cox 717, CCA ***(foll)***

Legislation referred to:
Penal Code (FMS Cap 45), s. 376

For the applicant - John Shek Kwok Bun; M/s. John Shek & Co.
For the respondent - Ahmad Zubir Jantan; DPP

JUDGMENT

Elizabeth Chapman JC:

This is an application by the applicant to be released on bail pending his trial on a charge of rape under s. 376 of the Penal Code (FMS Cap 45). He was first brought before the Sessions Court on 20 May 1995 on the said charge; he pleaded not guilty and applied to be released on bail. His application was refused, hence this motion before the High Court.

The prosecution objected to bail on the grounds that the offence was non-bailable, the accused was facing another charge of rape under s. 376 and the same had been fixed for hearing on 26 June of this year and further there was a danger that he might intimidate the complainant in this case.

It is well settled that the High Court will not lighty interfere with the exercise of discretion vested in the lower Court and where the Sessions Judge refused bail after taking into consideration all the circumstances of the case, the High Court will not interfere with this order unless it can be shown that the exercise of the discretion was erroneous.

From the facts of this case and from a perusal of the record of the Court below, it is apparent that the refusal to grant bail in this case stems from the accused being charged for another offence of rape during this release on bail pending the trial on 26 June of this year.

In deciding whether to grant or refuse bail the Court will have to take into consideration, amongst other things, the nature and gravity of the offence charged, the severity and degree of punishment which conviction might entail, the dangers of the offence being continued or repeated, the danger of the witnesses being tampered with or that the prosecution evidence might be tampered with, the opportunity of the accused to prepare the defence and the long period of detention of the accused.

It is well settled that bail will not be withheld merely as a punishment and that the requirements as to bail are to secure the attendance of an accused person at the trial - *R v. Rose* [1891] 67 LJQB 289; 17 Cox 717, CCA.

In this case, the refusal of the Court below to grant bail for the reason given earlier is, in my view, justifiable in the circumstances. The prosecution spoke of the likelihood of the accused intimidating the complainant in this case and that itself would be a cogent ground for refusing bail. Furthermore, the application for bail is not supported by any affidavit by the accused and the submission put forward on behalf of the accused by learned Counsel is that the Sessions Judge had not exercised her discretion correctly. I do not find this to be the case nor do I find that the exercise of the discretion was not done judicially. There is also nothing to show that the accused would be hampered in the preparation of his defence whilst under remand. Indeed, I do not find any exceptional and special grounds that would justify the granting of bail here. It is also noted that the Sessions Judge had fixed the earliest possible date for the trial, i.e. on 26 July 1995; the period of detention cannot therefore be said to be unduly long.

For the reasons given above, I hold that the lower Court had not erred in the exercise of its discretion; the application is accordingly dismissed.

Reported by Cindy Chan